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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/666,888

09/17/2003

Xin Xue

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9089

7590 02/27/2009  
Jonathan O. Owens  
HAVERSTOCK & OWENS LLP  
162 North Wolfe Road  
Sunnyvale, CA 94086

EXAMINER

BLAIR, DOUGLAS B

ART UNIT

PAPER NUMBER

2442

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/666,888	<b>Applicant(s)</b> XUE ET AL.	
	<b>Examiner</b> DOUGLAS B. BLAIR	<b>Art Unit</b> 2442	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 January 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 and 29-43 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 29-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/14/08, 10/27/08, 12/29/08, 1/19/09</u> .                   | 6) <input type="checkbox"/> Other: _____                          |



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## **DETAILED ACTION**

### ***Election/Restrictions***

The restriction requirement is moot as the second group of claims is now cancelled.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-20 and 29-43 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 35-43 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 35-43 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory “process” under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of *In Re Bilski* 88 USPQ2d 1385. The instant claims are neither positively tied to a particular machine that accomplishes the claimed method steps nor transform underlying subject matter, and therefore do not qualify as a statutory process. The claimed method is broad enough that the claim could be completely performed mentally, verbally or without a machine nor is any transformation apparent.

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 29-33 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 7,478,047 to Loyall et al.

See the mapping of claim 1 below. The content disclosed is the types of media claimed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14, 18-19, 34-39, and 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 7,478,047 to Loyall et al. in view of U.S. Patent Number 7,117,482 to Nguyen et al.

As to claim 1, Loyall teaches a version based content distribution system comprising: content comprising a version number (col. 75, lines 1-25); a syndicator, wherein the syndicator is configured to transmit the version number (col. 75, lines 1-25, the components file with the

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version number is transmitted separately from the actual content); a subscriber content comprising a subscriber version number (col. 75, lines 19-20); a subscriber configured to store the subscriber content, to compare the version number with the subscriber content version number, and to receive the content from the syndicator if the version number is different from the subscriber content version number (col. 75, lines 19-25); however Loyall does not explicitly teach the comparison determining which version is larger.

Nguyen teaches a method for comparing software version number by determining which number is larger (See Abstract).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Loyall regarding subscriber version management with the teachings of Nguyen regarding comparing the size of version numbers because Nguyen provides a specific example of the broad comparison method discussed by Loyall. One of ordinary skill in the art would be able to compare numbers to determine which one is greater.

As to claim 2, Loyall downloads from a server.

As to claim 3, Loyall teaches a display.

As to claim 4-6 and 37-39, Loyall does not specify what type of local computer is being used. One of ordinary skill in the art would recognize that the local computer could be a PDA, other hand held device or PC without altering the scope of Loyall.

As to claim 7, Loyall teaches a "predetermined transfer method" as claimed.

As to claim 8-10, the transfer in Loyall is considered application driven, isochronous, and one way.

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As to claim 11, Loyall uses a network so one of ordinary skill would recognize the use of an "IP method" as broadly claimed.

As to claim 12, In Loyall the user controls what is downloaded. This is considered a preference.

As to claims 13-14, these features are inherent to a web server.

As to claims 18-19, they are rejected for the same reasoning as claims 32-33.

As to claim 34, it rejected for the same reasoning as claim 1.

Claims 35 and its dependents are rejected for the same reasoning as claim 1 and its dependents.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 7,478,047 to Loyall et al. in view of U.S. Patent Number 6,990,498 to Fenton et al.

As to claims 15-17, Loyall teaches claim 1; however Loyall does not discuss the use of a tree structure.

Fenton teaches the tree structure claimed in claims 15-17 (See Abstract for example).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Loyall regarding the distribution of content by comparing version numbers with the teachings of Fenton regarding a tree structure because a tree structure is an efficient method for providing data to users.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 7,478,047 to Loyall et al. in view of U.S. Patent Number 6,119,165 to Li et al.

As to claim 20, Loyall makes obvious claim 1; however Loyall does not explicitly teach a proxy as claimed in claim 20.

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Li teaches a proxy as claimed in claim 20.

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Loyall regarding the distribution of content by comparing version numbers with the teachings of Li regarding using a proxy in a separate computer because a proxy allows a client to access the internet using a singular portal (Background of Li).

Claims 31 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 7,478,047 to Loyall et al. in view of U.S. Patent Application Publication Number 2001/0042073 by Saether et al.

As to claim 31, Loyall anticipates claim 29; however Loyall does not teach a version identifier comprising a date and time stamp.

Saether teaches a version identifier comprising a time stamp (paragraph 50).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Loyall regarding the distribution of content by comparing version numbers with the teachings of Saether regarding version comprised of time stamps because time stamps are one possible specific implementation of the broad disclosure on version numbers provided by Loyall.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOUGLAS B. BLAIR whose telephone number is (571)272-3893. The examiner can normally be reached on 9:00am-5:30pm.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Douglas B Blair/  
Primary Examiner, Art Unit 2442